though, adjective to describe what I have been seeing take place, and that is unconscionable. It is unconscionable for the House Democratic Party to treat welfare recipients as a political constituency for political gain.

Mr. Speaker, Americans have said that they are sick of a failed liberal welfare system that traps people in a cycle of dependency. Five million families, 9 million kids on AFDC, and at any given time over 50 percent of those families have been on AFDC welfare for over 10 years.

It is a system that ruins generation after generation, a system that has cost us as a country $5 trillion while making the situation worse. Two out of three black babies born out of wedlock, 20 percent of white children born out of wedlock.

Mr. Speaker, the American people want us to fix the welfare mess before it does any more damage and fix it, we will.

□ 1145

WELFARE REFORM

(Mr. SHAW asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHAW. Mr. Speaker, I have been sitting here listening to the speakers that came before me here this morning on the House floor criticizing the Republicans for what they are trying to do that is to reform welfare, criticizing the Republicans for bringing a child support bill to the floor and saying that it was not tough enough.

I will say to my friends in the Democrat Party you had 40 years to bring welfare reform to the floor and you never brought it; you had 40 years to bring a child support bill to the floor that was tough, and you never did it.

Now we are looking to you and we are reaching out to you as we are to the President, who gave a speech within the last hour on welfare reform, we are reaching out and saying come now and join with us because we are moving it forward. We are going to have welfare reform. It is going to pass this House. We are going to have a lot of Democrats that are going to be joining the Republicans who are pushing this agenda forward.

And you know what? We are going to be doing things for the poor that you never did. We are going to be doing things for the children that you neglected and we are going to reform welfare.

SUPPORT FOR TORT REFORM

(Mr. WELDON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON of Florida. Mr. Speaker, it is a pleasure for me to rise today and speak in support of the tort reform or lawsuit reform being brought before the House by the Republican leadership. As a physician who has practiced medicine in the community for the past 7 years, I can say that I have seen firsthand the terrible effect of this runaway problem with lawsuits on our Nation and in particular on our ability to practice good, high quality, cost effective medicine.

The people who have been paying for this runaway crisis in excessive lawsuits are the people of the United States. The patients have been playing the costs.

The time has arrived, it is long overdue. Reform is needed and reform is now, this week, before the House of Representatives. And I beseech all of my colleagues on both sides of the aisle to support the Republican programs for dealing with this problem in our Nation and restoring true balance to our criminal and civil justice system.

DEMOCRATS SCARING CHILDREN ABOUT SCHOOL LUNCHES

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, last week the Speaker of the House, NEWT GINGRICH, went out to a school here in Washington, DC, to try to support a program called the Earn and Learn Program. That is where they pay children $2 for reading a book and it is to encourage kids to learn. It is a great program; it is being adopted in many schools across this country.

But before he got there, two Members of the Democrat minority went out there and had lunch with the kids and told them that the Speaker was coming out and that he was going to take away their lunches, that the Speaker of the House was against them, he was going to take away the school lunch for all of the kids across the country and scared those little kids to death.

Now, that is wrong; that is wrong. The fact of the matter is we are going to increase school lunch funding by 4 percent, we are going to increase it. What we are going to cut is the bureaucracy. We are going to send it to the States in block grants, so that the Governors who understand their States and the mayors who understand their cities can distribute this money properly so that it goes to the intended purpose without a lot of bureaucratic expense.

And I really want to say to my colleagues on the Democrat side, if you criticize us for the school lunch program, criticize your colleagues for going out and scaring those little kids last week. That is wrong.

ATTORNEY ACCOUNTABILITY ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 104 and rule XXIII the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 988.

□ 1159

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 988) to reform the Federal civil justice system, with Mr. HOBSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, March 6, 1995, the amendment offered by the gentleman from Ohio [Mr. HOKE] had been disposed of and the bill was open to amendment at any point.

Two and one-half hours remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. BURTON OF INDIANA

Mr. BURTON of Indiana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BURTON of Indiana: In section 2, page 4, line 1, insert at the beginning of the line ''25 percent of''.

And on line 5, strike the period, insert a comma and add the following new language ''or the Court may increase the percentage above the 25 percent if in the opinion of the Court the offeree was not reasonable in rejecting the last offer.''

Mr. BURTON of Indiana. Mr. Chairman, I believe that if there is a frivolous lawsuit filed there ought to be a penalty assessed on the plaintiff. I believe that should be the case. I do not believe, however, it should be a 100 percent losers paying totally, and the reason I say that is because I have known a number of people who have been involved in litigations of this type who have had a legitimate lawsuit, and because of the jury or because of the judge or for whatever reason the ruling was against them, and they were not in a position to be able to pay exorbitant legal fees on the part of the defendant.

Many times these defendants are lawyers for large corporations who can drag these suits on for long periods of time and spend an awful lot of money. Look at some of the trials like you see on TV right now like the O.J. Simpson trial, you see how much time and effort and money is being spent on legal defense.

Some of these people are very proficient at what they do. Can you imagine, we are not talking about a murder trial now, but can you imagine a person in a civil case that is suing somebody and they have the ability to hire the kind of legal counsel you see in the O.J. Simpson case where millions of dollars might be spent in defending someone?

So I believe that there ought to be some middle ground. And that middle ground is exhibited in my amendment, and my amendment says that if the plaintiff loses the case, there is a 25-percent penalty. But if it is a frivolous

flagrant case, the judge has the ability to expand that up to 100 percent. So there is somewhat of a sliding scale.

I talked to the gentleman from Virginia [Mr. GOODLATTE] last night, the bill's sponsor, and he said he thought he could live with some kind of sliding scale. The problem is that neither the gentleman from Virginia [Mr. GOODLATTE], nor I, nor anyone in the body could come up with a sliding scale. So the next best thing is to come up with a hard percentage, like the 25 percent I am talking about, and then leave discretion to the judge in the event he feels like it is a case that was not meritoriou and was frivolous and he can raise that fee. I think that will discourage an awful lot of lawsuits.

In addition, I think this will bring both sides closer together than the loser pays provision that is already in the bill because it is going to encourage the plaintiff, because he knows there is a penalty if they lose the case; and it is going to encourage the defense because they know they are not going to get 100 percent even if they hire high-powered lawyers to win the case. So I think this will force more people to settlement, even more so than the entire loser pays provision in the bill.

So, Mr. Chairman, I believe this is a sound, reasonable amendment. It strikes a middle ground. It comes as close to the sliding scale the gentleman from Virginia [Mr. GOODLATTE] said he would accept without going to an actual sliding scale, which I think is an impossible thing to achieve.

Ms. HARMAN. Mr. Chairman, I rise in support of the Burton amendment.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, I would like to commend the gentleman from Indiana [Mr. BURTON] for trying to do something that concerns many of us in this body who have listened intensely to the debate on this issue. I think that everyone here does not want to deter meritorious lawsuits, but it is also true that there are abuses, and we do want to deal with those abuses in a fair way.

I think that the Goodlatte language, especially as amended by him, goes a long way toward doing that, but there are possible excesses in that language, and the gentleman from Indiana [Mr. BURTON] has suggested a remedy that would amount to a sliding scale of fee awards that would deal with those excesses.

I know the gentleman from Indiana [Mr. BURTON] speaks here from personal experience, and I think it is very commendable that he would offer this. I also want to say that should his amendment fail, I intend to offer an amendment to provide a different approach to this very difficult subject, which I think also merits consideration.

My bottom line here is this is not a partisan issue, this is about fairness, it is about curbing abuse, but it is also about permitting meritorious action.

I urge support for the Burton amendment.

Mr. MOORHEAD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Indiana. The amendment would limit loser pays to a 25-percent recovery. This would in effect defeat the concept of loser pays. What this does is substantially reduce the incentive for the parties to settle their cases out of court.

If we are going to go on with a loser-pays provision, let us not weaken it or water it down to such a point that it defeats the whole purpose.

The other part of the amendment giving the judge discretion to increase the 25 percent would only lead to further litigations on whether the offer is reasonable or unreasonable. The amendment I believe would seriously weaken loser pay.

We have a number of provisions in the legislation now that puts restrictions on loser pay. We have tried to reach the areas where it is between, where the judgment is between the offer of the defendant and the offer of the plaintiff; there would be no loser pay involved there. There are provisions that a judge can use his discretion as to whether to provide for loser pay in the legislation.

I think that if we are going to go in this direction there is not much left of the loser-pay provision. I do not think that the 25 percent still left in here will have much effect on encouraging people to settle. I do not think it will have much to do to cut down on overall litigations. And for that reason I would ask for a ''no'' vote on this amendment.

Mr. BURTON of Indiana. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I am happy to yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Chairman, I do not quite understand the chairman's argument. He said that this would eliminate the forcing of a settlement before the trial takes place. It seems to me that this puts more of a balance into the legislation instead of having all of the burdens shifted over to the plaintiff.

Right now you are shifting 100 percent of the costs to the plaintiff if he does not settle and the judgment is below what was the last offer. And it seems to me that that is putting undue pressure on the plaintiff.

What I was trying to do was to try to reach a middle ground that was more fair than what the original legislation intended.

Mr. MOORHEAD. But actually it applies to both the defendant and the plaintiff. The plaintiff is not the only one that could be caught paying the other person's fees.

But I can tell the gentleman that you can limit the amount of money you may have to pay by prior to 10 days before trial making your final offer and you will not have to pay the fees that have accrued prior to that time. You many be able to strike under the present bill a large percent of what you might otherwise have had to pay.

But I do think that if you go down from there and have only 25 percent of what would accrue from that time forward, you do not have very much left out of your loser pays.

Mr. BURTON of Indiana. If the gentleman will yield on one further question. The further question is did the gentleman understand, he did not mention in his comments, that the judge does have latitude to increase that 25 percent to 100 percent if he chooses to do that?

Mr. MOORHEAD. I understand that, and I did comment on that in my comments, that you come to another argument when you go into that. You lead to further litigation and dispute as to whether the offer has been reasonable or unreasonable, many other things that could be involved there, and we are going to have an irregularity between one judge and another as to what you get out of the law as we intend it to be.

□ 1200

Mr. BURTON of Indiana. Mr. Chairman, if the gentleman would yield further, I ask, ''Don't judges already have latitude?''

Mr. MOORHEAD. To a certain extent.

Mr. BURTON of Indiana. Then why would this exacerbate that situation?

Mr. MOORHEAD. I say to the gentleman, ''Primarily because, whey you cut from 100 percent to 25 percent, you're gutting the very issue we're talking about.''

Mr. BURTON of Indiana. But the fact of the matter is judges have latitude right now. What we are setting is a floor of 25 percent, and we are allowing them to go to 100 percent.

So what the gentleman wants to do is he does not want the judges to have any latitude; is that correct?

Mr. MOORHEAD. They do have some latitude under the bill as it is written.

Mr. BURTON of Indiana. But the gentleman does not want them to have this latitude.

Mr. MOORHEAD. Latitude in every single case where they have not found that it will work an injustice.

We have in our legislation that we have, we have provisions in those extreme cases where the judge does have a latitude.

Mr. BURTON of Indiana. Well——

Mr. MOORHEAD. I just think, if the gentleman is not in favor of loser pays, of course he is not going to like this at all. But under the amendments that we have put into the bill, a lot of the sting of loser pays has been taken out already——

Mr. BURTON of Indiana. If the gentleman would yield——

Mr. MOORHEAD. In the Goodlatte amendment.

Mr. BURTON of Indiana. One more brief comment, and that is this, that I

do agree that there should be a penalty, and I agree that the penalty should be pretty severe. Twenty-five percent is not peanuts in many of these cases, but what I disagree with——

The CHAIRMAN. The time of the gentleman from California [Mr. MOORHEAD] has expired.

(On request of Mr. BURTON of Indiana and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 1 additional minute.)

Mr. BURTON of Indiana. What I disagree with is that this is putting such a huge burden on, in many cases, people who could not afford to pay the 100 percent, and—but at the same time the gentleman is still giving the judge latitude in the event it is a frivolous case. It seems to me this is as close to a sliding scale as the gentleman from Virginia [Mr. GOODLATTE] requested, as we can possibly come.

Mr. MOORHEAD. It is a sliding scale though.

Mr. BURTON of Indiana. Well, Mr. Chairman, I say to the gentleman, ''Well, you're giving the judge latitude; I mean that's a sliding scale.''

Mr. MOORHEAD. Possibility.

I say to the gentleman, ''I think you're just defeating loser pays.''

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the gentleman from Indiana [Mr. BURTON] and I have been discussing since last night the gentleman's concerns, and what I would first say to the gentleman is that let us not forget that we are talking about diversity cases in Federal district court. We are not talking about, by any means, all tort cases. In fact, what we are really talking about are the vast majority of these cases not being the kind of tort cases the gentleman described. They are being mostly contract cases and issues——

The CHAIRMAN. The time of the gentleman from California [Mr. MOORHEAD] has expired.

(On request of Mr. GOODLATTE and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, would the gentleman yield further?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. It would be my hope that we could work something out along the lines of the amendment that I suggested there which would help out in the case where a plaintiff actually got a judgment against a defendant, but the defendant offered more under the proceeding that is provided for in the bill than what the plaintiff got from the jury, and under those circumstances, because a case is really two parts; it is part liability and part proving damages, and clearly the plaintiff would have proven liability in those circumstances. Then there is an argument to be made that it should be less than 100 percent. It would make it 50 percent.

If the gentleman would work with us along those lines and withdraw his amendment, it would be very helpful.

Mr. BURTON of Indiana. Mr. Chairman, would the chairman yield briefly?

Mr. MOORHEAD. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Let me just make two comments.

First of all, many of the States are working on similar legislation of this right now as far as State litigation is concerned. We all know that. I believe that what we do here today will serve as a model for many of those States, so this reaches beyond just Federal litigation in my view in the long run.

In addition to that, I read the gentleman's amendment, and, while I think that is a step in the right direction, the problem I have with that is we still have some jurors and some judges that may rule against a legitimate case, and what the gentleman's amendment does is only deals where the plaintiff gets some kind of a settlement. If the plaintiff does not get any settlement, then he or she still pays 100 percent of the defense cost for the defendant, and in my view, as my colleagues know, that could work an undue hardship.

My amendment, my amendment right now, says that they do have a 25-percent penalty, and, if it is truly a frivolous case, the judge can assess more than that, but it does leave some discretion with the court, and to me that makes some sense.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield further?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Let me say to the gentleman from Indiana, let us not forget that under the current system that exists right now that the circumstances the gentleman just described where a judge or a jury unfairly ruled against a party, if they rule against a defendant, they are stuck right now paying attorney fees, and substantial attorney fees. Under a contingency fee case the gentleman describes, that would not be true of a plaintiff; you see?

So there is a definite disparity in the law as it exists right now.

Mr. BURTON of Indiana. Mr. Chairman, if the gentleman would yield, let me just say that all cases are not on a contingency basis.

Mr. GOODLATTE. That is correct.

Mr. BURTON of Indiana. And the gentleman keeps talking about a contingency basis, but many of those are on hourly rate, and so the plaintiff does pay legal fees in many of these cases on an hourly rate, and it is pretty doggone high.

So this contingency thing is real, but that is not 100 percent.

Mr. GOODLATTE. If the gentleman would yield further, the gentleman is correct, but in tort cases I think he would find the overwhelming majority, if not all of them, are going to be on a contingency fee basis. I am sure there are a few that are not, but very, very few.

What we are really talking about are other types of contract actions and so on where that would be the case, but then again that would be true of both parties facing that liability under the circumstances that the gentleman describes. My amendment would cure the difficulty that we are talking about here.

Mr. BURTON of Indiana. If the gentleman would yield further, I say to the gentleman, if your amendment would deal, in addition to those cases where the plaintiff got a settlement, but below the last best offer; if it went further than that, even where the plaintiff lost, I could probably accept that amendment, but the gentleman completely eliminates that possibility.

I say to the gentleman, in your amendment here that you just presented to me, if the plaintiff gets a zero grant or zero decision from the court, he still picks up 100 percent of the defense's legal fees. So that part of the amendment I don't think is good, and I could not accept that.

Mr. MOORHEAD. Mr. Chairman, I yield back the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to commend my colleague, the gentleman from Indiana [Mr. BURTON], for bringing a real-life situation into this debate which demonstrates the severe adverse impact that this bill would have on ordinary working people in this country. I also want to commend him for this effort to improve the provisions of the underlying bill, which I think his amendment would do. However at the same time I want to point out the problem that the amendment demonstrates that the underlying bill presents to us.

I say to my colleagues, ''When you try to apply this bill to other than frivolous cases, you are inevitably going to get into the very kind of situation that Mr. BURTON's amendment is trying to address, and, once you start to do this sliding scale approach, or once you try to do 25 percent, or 50 percent, or 75 percent, or 10 percent, what you have started to do is demonstrate the sheer irrationality of the entire approach that is being applied here because, once you get on that kind of slippery slope, as we used to call it in the law, you can't figure out where to draw the line in a way that it makes any kind of sense, and it doesn't show that a higher threshold necessarily makes any more sense. What it shows is that the underlying approach that you are using when you apply it to nonfrivolous lawsuits doesn't make any sense.''

So, Mr. Chairman, while I commend the gentleman for coming forward with the amendment, which is an improvement, it gets us on that slippery slope and moves us on this sliding scale toward a better bill, we would really be

better served if we went back to the approach of limiting the underlying bill only to frivolous cases.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. The effect of this amendment would be to say in a case where somebody loses a lawsuit for whatever reason that not only are their attorney fees limited in the fashion they have already been limited in the bill, and we have limited them in several respects: First of all, we have limited them to 10 days before the trial through the trial, and we have done that for good reason.

It has been pointed out that a party to a lawsuit through the discovery process could drive up the amount of attorney fees by loading up the other party with discovery motions, and depositions and so on. So we limit it to 10 days before trial through the trial, which is the time when one is, generally speaking, preparing for trial and preparing the case. Second, we have limited it so that the losing party would not be required to pay the prevailing party more than the attorney fees that the prevailing party is—the losing party is paying their own attorney.

The fact of the matter is that that also has a good purpose in the bill because it prevents the deep pockets that so many on the other side have talked about from loading up the attorney fees by bringing four attorneys into trial and so on. They cannot, by adding costs on their side, make the nonprevailing party, the losing party, pay more costs because it is limited that they cannot pay the other side more than they pay their own attorney. So they have the ability to some extent to control and to limit that.

Finally, we have in this bill a provision which allows the court in its discretion to not apply the provisions of this bill under two circumstances. One circumstance is where it finds that it would be manifestly unjust to do so, and that certainly gives the court discretion. In addition, the court can find that the case presents a question of law or fact that is novel and important and that substantially affects nonparties, and if a—and can exempt it for that reason as well.

This amendment will take that 75 percent further. Three quarters of the attorney fees that are provided for that are left in this bill would be taken out of the bill with this amendment. It is not a good amendment from that standpoint. It is not reasonable to think that just the 25 percent will have the kind of effect that we need to have on frivolous lawsuits, fraudulent lawsuits, nonmeritorious lawsuits, and not the kind of effect we need to have that is provided in this bill to encourage greater settlement of these cases. The effect of this will be say, ''Yes, you might have to pay a little bit of attorney fees, but it's going to be you don't have to pay a lot.''

For those reasons I would strongly urge that my colleagues defeat this amendment. This is not a good amendment from the standpoint of trying to do something about the explosion of litigation in this country.

The fact is that the Girl Scouts; we have talked about all these big corporate defendants in this country. Well, one of the organizations that supports the legal reforms we have are the Girl Scouts, and the Girl Scouts' counsel here in Washington, DC, says that the first 87,000 boxes of Girl Scout cookies that they have to sell goes to raise the $120,000 to pay their liability insurance. The effect of that is that, before one penny can be spent to help Girl Scouts with all the wonderful programs that Girl Scouts have, not one penny can be spent until they sell 87,000 boxes and raise $127,000 to deal with the liability.

Little Leaguers are opposed, are in favor, of legal reforms because they know that it is becoming increasingly difficult to get people to participate in allowing them to use their fields for ball diamonds because of the fact that they face greater and greater exposure to lawsuits, and the loss of insurance, and the risk of being brought in as parties to these cases.

This is not a problem that deals with corporate America alone. It certainly does add to the cost of consumer goods when corporations raise those prices to consumers. It certainly does have an effect on insurance companies when they raise insurance premiums to all Americans for their automobiles, for homeowners insurance, for any kind of insurance that we want to name. The costs are going up, and they are going up rapidly.

Mr. Chairman, the cost of our litigation system in this country is rising at a faster rate than the cost of our medical system in this country, which we spent all of last year addressing——

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 2 additional minutes.)

Mr. GOODLATTE. Mr. Chairman, the fact of the matter is that legal costs in this country are rising at a rate of 12 percent a year, far in excess, far in excess of what is happening even in the cost of medical care, but certainly three or four times the rate of inflation in this country.

□ 1215

And this amendment will reduce drastically the ability to use this provision to say, when you file a lawsuit, you take a risk. You have made the risk way too small, I would say to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Let me just say that I think that a 25-percent penalty is an inducement for settlement. The gentleman keeps acting like it is nothing. Twenty-five percent of the legal fees of the defendant can be an awful lot of money, especially in a Federal case. We are not talking about peanuts. I think that this will dissuade people from going to trial, and it will force a settlement. The gentleman acts like if it is not 100 percent, it is not going to force a settlement.

The other thing you are discounting is that if it is a frivolous case, the judge can start at the 25 percent and go all the way to the 100 percent level. So you can have total loser pays.

This is a good middle ground. It will dissuade people from going to court. It will force settlements. So I think the gentleman is overstating the case. It will not be as onerous as far as forcing settlements as 100 percent. But it certainly is going to force a lot of these people to settle out of court without going to trial. Twenty-five percent is a step in the right direction, and it still gives the judge latitude to go all the way to 100 percent. I think this is a good amendment.

Mr. GOODLATTE. Reclaiming my time, I would say to the gentleman that the mechanism I offered to deal with the case where the plaintiff proves the case but has been unreasonable in their settlement negotiations and gives them some relief there would be something that would be tolerable. But 25 percent in all cases regardless of whether or not they are meritorious or not, we know that when discretion is given to judges in these cases——

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has again expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 2 additional minutes.)

Mr. GOODLATTE. When you take that in all cases and then ask the judge to give more, the history with rule XI sanctions is that it is very, very, very rarely done. And the attorneys know it, and they do not worry about rule XI sanctions because they know that the odds of them being applied to them are very, very remote. If you put this provision in, they are going to know that it is 25 percent. Maybe there is a remote chance of getting more, but it is not going to be 100 percent in the cases that it should be 100 percent in.

Mr. BURTON of Indiana. Mr. Chairman, if the gentleman will continue to yield, I understand the gentleman does not think the judges will assess this additional 75 percent in a case where it is a flagrant example of a frivolous case. But I do not think I agree with that. At least there is 25 percent penalty, a flat 25 percent right off the top.

Let me just say something about the amendment you referred to. The problem with your amendment that you suggested as an alternative, and it is a step in the right direction, is that it is 50 percent if the plaintiff gets less than

the last best offer. But in the event he or she gets zero, they still pay 100 percent of the defendant's legal expenses. And in many cases, I wish the gentleman would just pay attention here for a second, in many cases, you may have a jury or a judge who for one reason or another does not like the way the plaintiff looks and they rule that they should not get anything and then they have to pick up 100 percent of the cost.

If the gentleman made this 50 percent across the board, I would accept it.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I just wanted to say that I heard the gentleman citing the Girl Scouts, I just came from the Committee on Rules where they are citing the Girl Scouts. On Friday the Girl Scouts were on the front page of the Wall Street Journal saying please, please, this is not their legislation. Today in the Wall Street Journal, on the first section of section B, they are saying that once again. Let me quote, it says, ''It is not at all true, we have been harangued with frivolous lawsuits. That is absolutely not the case.''

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

(On request of Mrs. SCHROEDER, and by unanimous consent, Mr. GOODLATTE was allowed to proceed for 30 additional seconds.)

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, that is what the head of the Girl Scouts says. Having been a Girl Scout, when I was younger, the one thing they believe in is in truth. It says, ''Truth has been the first casualty.'' I really wish Members would stop citing the Girl Scouts, when they have been frantically trying over and over again to say they have not been inundated with frivolous lawsuits and you do not have to sell all of those cookies to pay this off. They really would like to get that out there. So I really think we ought to stop calling this the Girl Scout cookie bill because the Girl Scouts do not want that name.

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has again expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, I thank the gentlewoman for her comments. The fact of the matter is, the representative of the Girl Scouts here in the Washington Area District Girl Scout Council told me this personally, 87,000 boxes of cookies sold to raise $120,000 to pay liability insurance before they ever can spend a penny on anything else.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, I assume that the national office keeps those records. I think what happens here, it is like the old game we used to play in Girl Scouts called telephone. I think probably some of the leaders have heard that passed along. The national Girl Scout office has said that is not true.

Mr. GOODLATTE. Reclaiming my time, the representative of the Girl Scouts for the Washington District Council told me and a number of other Members of Congress and others personally that that was the fact. I am not representing that as something I know personally. I am representing it as what was told to me by a representative of the Girl Scouts.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

I just want to quickly answer that I think in all honesty that we ought to be listening to the Wall Street Journal which has now made two passes at that. We also ought to be listening to the National Girl Scout office of New York which would be handling those complaints. I think that that is very key. They have said this over and over again. This whole debate is full of all sorts of stories that get blown out of proportion.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. BURTON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BURTON of Indiana. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 202, noes 214, not voting 18, as follows:

[Roll No 204]

AYES—202

Ackerman	Deal	Gutierrez
Andrews	DeFazio	Hall (OH)
Baesler	DeLauro	Hamilton
Baker (LA)	Dellums	Harman
Baldacci	Deutsch	Hastings (FL)
Barcia	Diaz-Balart	Hayes
Barrett (WI)	Dicks	Hefner
Bateman	Dingell	Hilliard
Becerra	Dixon	Hinchey
Beilenson	Doggett	Holden
Bentsen	Dooley	Hoyer
Berman	Doolittle	Hunter
Bevill	Doyle	Jackson-Lee
Bilirakis	Duncan	Jacobs
Bishop	Durbin	Johnson (SD)
Bonior	Edwards	Johnson, E. B.
Borski	Ehrlich	Johnston
Boucher	Engel	Kanjorski
Browder	English	Kaptur
Brown (CA)	Eshoo	Kennedy (MA)
Brown (FL)	Evans	Kennedy (RI)
Brown (OH)	Farr	Kennelly
Burton	Fattah	Kildee
Buyer	Fazio	Kleczka
Cardin	Fields (LA)	Klink
Chapman	Filner	LaFalce
Clay	Foglietta	Lantos
Clayton	Ford	Laughlin
Clement	Fox	Levin
Clyburn	Frank (MA)	Lewis (GA)
Coleman	Frost	Lincoln
Collins (IL)	Furse	Lipinski
Conyers	Gephardt	Livingston
Costello	Gilman	Lofgren
Coyne	Gonzalez	Longley
Cramer	Gordon	Lowey
Danner	Graham	Luther
Davis	Green	Maloney
de la Garza	Greenwood	Manton
Markey	Payne (NJ)	Stokes
Martinez	Pelosi	Studds
Martini	Peterson (FL)	Stupak
Mascara	Pomeroy	Tanner
Matsui	Poshard	Tejeda
McCarthy	Quillen	Thompson
McCollum	Rahall	Thornton
McDermott	Reed	Thurman
Meehan	Regula	Torres
Menendez	Reynolds	Torricelli
Mfume	Richardson	Towns
Miller (CA)	Rivers	Traficant
Mineta	Roemer	Tucker
Minge	Ros-Lehtinen	Velazquez
Moakley	Rose	Vento
Mollohan	Roybal-Allard	Visclosky
Moran	Rush	Volkmer
Morella	Sabo	Ward
Murtha	Sanders	Watt (NC)
Myers	Sawyer	Waxman
Nadler	Schroeder	Williams
Neal	Schumer	Wilson
Oberstar	Scott	Wise
Obey	Serrano	Woolsey
Olver	Skaggs	Wyden
Ortiz	Skelton	Wynn
Owens	Slaughter	Yates
Pallone	Spratt	
Pastor	Stark	

NOES—214

Abercrombie	Gallegly	Montgomery
Allard	Ganske	Moorhead
Archer	Gekas	Myrick
Armey	Geren	Nethercutt
Bachus	Gilchrest	Neumann
Baker (CA)	Gillmor	Ney
Ballenger	Goodlatte	Norwood
Barr	Goodling	Nussle
Barrett (NE)	Goss	Oxley
Bartlett	Gunderson	Packard
Barton	Gutknecht	Parker
Bass	Hall (TX)	Paxon
Bereuter	Hancock	Payne (VA)
Bilbray	Hansen	Peterson (MN)
Bliley	Hastert	Petri
Blute	Hastings (WA)	Pickett
Boehlert	Hayworth	Pombo
Boehner	Hefley	Porter
Bonilla	Heineman	Portman
Bono	Herger	Pryce
Brewster	Hilleary	Quinn
Brownback	Hobson	Radanovich
Bryant (TN)	Hoekstra	Ramstad
Bryant (TX)	Hoke	Riggs
Bunn	Horn	Roberts
Bunning	Hostettler	Rohrabacher
Burr	Houghton	Roukema
Callahan	Hutchinson	Royce
Calvert	Hyde	Salmon
Camp	Inglis	Sanford
Canady	Istook	Saxton
Castle	Johnson (CT)	Scarborough
Chabot	Johnson, Sam	Schaefer
Chambliss	Jones	Schiff
Chenoweth	Kasich	Seastrand
Christensen	Kelly	Sensenbrenner
Chrysler	Kim	Shadegg
Clinger	King	Shaw
Coble	Kingston	Shays
Coburn	Klug	Shuster
Collins (GA)	Knollenberg	Sisisky
Combest	Kolbe	Skeen
Cooley	LaHood	Smith (MI)
Cox	Largent	Smith (NJ)
Crane	Latham	Smith (TX)
Crapo	LaTourette	Smith (WA)
Cremeans	Lazio	Solomon
Cubin	Leach	Souder
Cunningham	Lewis (CA)	Spence
DeLay	Lewis (KY)	Stearns
Dickey	Lightfoot	Stenholm
Dreier	Linder	Stump
Dunn	LoBiondo	Talent
Ehlers	Lucas	Tate
Emerson	Manzullo	Tauzin
Ensign	McCrery	Taylor (MS)
Everett	McHale	Taylor (NC)
Ewing	McHugh	Thomas
Fawell	McInnis	Thornberry
Fields (TX)	McIntosh	Tiahrt
Flanagan	McKeon	Torkildsen
Foley	McNulty	Upton
Forbes	Metcalf	Vucanovich
Fowler	Meyers	Waldholtz
Franks (CT)	Mica	Walker
Franks (NJ)	Miller (FL)	Walsh
Frelinghuysen	Mink	Wamp
Frisa	Molinari	Watts (OK)

Weldon (FL)	Wicker	Zeliff
Weller	Wolf	Zimmer
White	Young (AK)	
Whitfield	Young (FL)	

NOT VOTING—18

Collins (MI)	Gibbons	Rangel
Condit	Jefferson	Rogers
Dornan	McDade	Roth
Flake	McKinney	Stockman
Funderburk	Meek	Waters
Gejdenson	Orton	Weldon (PA)

☐ 1241

The Clerk announced the following pair:

On this vote:

Mr. Flake for, with Mr. Jefferson against.

Messrs. BRYANT of Texas, CREMEANS, TAYLOR of Mississippi, SISISKY, and PORTER changed their vote from ''aye'' to ''no.''

Messrs. MYERS of Indiana, RICHARDSON, and TORRES changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment that has been redesignated the Conyers-Nadler amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS: Page 6, after line 24, insert the following:

(e) LIMITATION ON APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to civil actions to which any of the following applies:

(1) Section 772 of the Revised Statutes of the United States (42 U.S.C. 1988).

(2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

(3) The Fair Housing Act (42 U.S.C. 3601 et seq.).

(4) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(5) The Equal Access Act (20 U.S.C. 4071 et seq.).

Rule 11 of the Federal Rules of Civil Procedure, as in effect immediately before the effective date of such amendments, shall apply with respect to such civil actions.

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, this is an amendment which has been referred to indirectly throughout the debate, and it might gather the support of the manager of the bill on the other side. I will present it and hope that it does.

☐ 1245

I want to thank the gentleman from New York [Mr. NADLER], my colleague on the committee, for his work on a very important part of this bill.

This is an amendment that would preserve our citizens' hard-earned right to protect their civil and other constitutional rights including religious rights.

What we are doing essentially is exempting civil rights cases, religious cases, and gender cases from the bill in terms of attorney sanctions and payments. This leaves the decision on the merit in the hands of the courts.

The people of this country, the Members of this body, have fought too long and hard for religious and civil rights groups in this country to see these precious rights slip away in a little-noticed procedural provision in the Contract With America.

My amendment would safeguard these rights by providing that cases involving religious, racial, and gender discrimination can be brought without undue fear of chilling legal sanctions. Importantly, the amendment would allow rule 11 as it currently exists to provide for discretionary court-imposed sanctions to continue to apply in civil rights and religious cases. This contrasts with the mandatory court sanctions which are contained in the bill before us.

This is a very important distinction because we have a list of lawsuits and attorneys that have been sanctioned under this measure, in a disproportionately large amount of civil rights cases and religious cases. The attorneys have been brought to heel under rule 11, and we are very, very much afraid of what would happen if we would change this to mandating the court to impose these sanctions.

In cases where our citizens have to go to court to protect their constitutional rights, it is imperative that we have as open and fair a court procedure as possible. While rule 11 may have some limited role to play in these cases, it should not have a dominant or overreaching role as would be the case under this bill.

I remind the Members of the fire storm that erupted on Capitol Hill as a result of a 1992 Supreme Court decision, in Employment Division versus Smith, where the court discarded decades of free exercise jurisprudence by holding that the free exercise clause does not relieve individuals of obligations to comply with supposedly neutral laws that restrict their freedom of religion.

How would this occur? What we would do under H.R. 988 is make it more difficult for courageous citizens to bring legal actions to redeem their constitutional rights. It would mandate that litigants pay the other side's legal fees whenever a legal pleading was somehow shown to be unworthy. It would completely remove any equitable discretion by the courts. It also would create a great amount of contention among the parties.

I want to just tell Members a little bit about where rule 11 has come from over the years. We have got a number of studies, but one from the Georgetown Law Journal by Professor Nelken found that 22 percent of the rule 11 motions between 1983 and 1985 were filed in civil rights cases, even though these cases comprised only 7 percent of the civil docket.

At Fordham University, there was a study that in all reported cases from 1983 to 1987, rule 11 sanctions against civil rights plaintiffs were imposed at a rate of 17 percent greater than against all other plaintiffs.

In other cases, we found that the safe harbor provision in rule 11 now was very important and should be preserved.

Please support this civil rights amendment.

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan [Mr. CONYERS].

If I thought for 1 minute that rule 11 sanctions had fallen disproportionately on civil rights attorneys I would have crafted an amendment exempting them, but that's not the case.

The 1991 Federal Judicial Center study on the operation and impact of rule 11 was designed to examine several of the questions about the effects of the rule. The study found:

While the incidence of rule 11 activity has been higher in civil rights cases than in some other types of cases, the imposition rate of sanctions in civil rights cases has been similar to that in other cases.

The study found that rule 11 had not been invoked or applied disproportionately against represented plaintiffs and their attorneys in civil rights cases.

The FJC concluded that rule 11 has not interfered with creative advocacy or impeded the development of the law.

Professor Maurice Rosenberg, Columbia University School of Law, reviewed a subset of sanctioned civil rights cases and commented in his 1990 testimony to the Committee on Rules and Practice and Procedure:

Many complaints strain hard to pretend they involve civil rights claims so that, for example, attorneys' fees may accompany a successful or partially successful outcome.

If a complaint alleges that the towing away of plaintiff's car by the police or the refusal of the San Francisco authorities to allow softball to be played on the hardball field violated the plaintiff's civil rights, is that claim correctly counted as a ''civil rights action?'' That designation covers a wide assortment of grievances, many of which are pressed in order to break new legal ground or, as suggested above, for ulterior purposes.

Finally, the issue of fair administration of rule 11, like many other procedural issues, depends upon the fairness and competence of the Federal judiciary. When properly applied, rule 11 should not unjustly deter litigation by civil rights plaintiffs or any other group.

I urge a ''no'' vote on the amendment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding. Is he aware that the Judicial Conference studied the rule in 1989 after 16 experts and they made the two changes? First they

made the change that would leave the sanctions to the court's discretion and they created this safe harbor passage for rule 11 motions for 21 days.

This has been working very, very effectively and has cured the problem that I was pointing out to you, that there is no question that before that, we had a serious problem of civil rights and religious rights organizations' lawyers being sanctioned.

Is the gentleman familiar with the procedure, the change that rule 11 underwent?

Mr. MOORHEAD. Senior U.S. District Judge Milton Shadur of the northern district of Illinois said he generally would welcome the restoration of the old rule.

''The most recent changes watered it down,'' he says, ''by offering an out for lawyers who get caught when filing frivolous pleadings.''

''At this point rule 11 is pretty much dead,'' he said.

That dealt with what was done with these amendments that you are talking about. We are putting it back in as rule 11 was for 10 solid years, and virtually all of the judges across the country believed it helped them and it brought a better quality of justice to the courts.

Mr. CONYERS. If the gentleman would yield a final time, the gentleman was aware that this was studied by the Judicial Conference, went to the Supreme Court, passed muster there, is working very well. We are talking about December 1993. This is a very premature decision for us without sending it back up the chain of command for rulemaking in the Federal judiciary to snatch the discretionary sanction of the judge away from him after such a short notice.

I would urge the gentleman to realize the seriousness of what he is proposing here in opposing this very modest rulemaking sanction that I am modifying.

We are not eliminating rule 11. We are just saying the judge would have the discretion that he had as a result of all the work the judges did in 1993.

Mr. NADLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of this amendment to exempt civil rights lawsuits from the mandatory rule 11 provision of the bill and to leave it up to the discretion of the judges. I hope that some of the gentlemen on the other side will listen to what I am about to say because I do not think it has been said before.

Last year, we passed the Religious Freedom Restoration Act to undo the Supreme Court decision in the Smith case. There are a number of other court decisions narrowing religious freedom which have not been undone and which people seek to try to challenge for reconsideration in court.

For example, there are a number of decisions narrowing the Religious Accommodations Act which various religious groups want to litigate as well as to try to get this Congress to change.

A memo that I have here from the Christian Legal Society says, for example, an attorney arguing a religious discrimination case and urging the courts to reject the reasoning in any of the existing cases could well be subject to the rule 11 sanctions as contained in this bill. The litigation route presently presents the only opportunity religious individuals will have to seek relief in employment discrimination cases. On this basis, and on the basis of the inclusion in the amendment to the Equal Access Act, the Christian Legal Society and the National Association of Evangelicals will support the amendment.

I have here, Mr. Chairman, and I hope the gentleman from California will pay attention to this so we can comment on it, a letter from the Christian Legal Society and the National Association of Evangelicals in support of this amendment, and I am going to read excerpts from it.

On behalf of the Christian Legal Society's Center for Law and Religious Freedom and the Public Affairs Office of the National Association of Evangelicals, we express our full support for any amendment that would exempt civil rights suits including those under the Equal Access Act and the Religious Freedom Restoration Act from this bill's purview.

The history of religious liberty demonstrates that the powerless sometimes must look to the courts in cases that ''push the envelope'' of the law in order to vindicate our most precious freedoms in ways that existing law does not. We are concerned that mandatory sanctions will discourage the bringing of meritorious religious claims, not just frivolous ones. The first freedom of the first amendment is too precious to risk such a chilling effect. Any interest in judicial efficiency is far outweighed by our duty to keep open the doors of the Federal judiciary to such cases.

Moreover, the preemptive effect of this bill is unnecessary in civil rights cases. Unlike commercial lawsuits, people rarely sue the government merely seeking a nuisance settlement. The few who do can still be dealt with under a discretionary rule 11. Federal judges have not shown that they need to have their judgment handcuffed in this way, at least not in civil rights litigation.

For any and all of these reasons, we support your amendment to section 4 of H.R. 988.

Thank you, * * *.

Respectfully yours, Steven T. McFarland, Director, Center for Law and Religious Freedom of the Christian Legal Society, and Forest Montgomery, General Counsel, Office of Public Affairs for the National Association of Evangelicals.

Mr. Chairman, I think this graphically shows why it is necessary to adopt this amendment if we are going to take our usual protective attitude toward religious liberty. I do not agree with this bill in general and I do not agree that we need to have mandatory rule 11 sanctions. But even many of those who do agree with that I would hope could recognize the distinction on civil rights and religious liberty cases. If someone is suing on a products liability case or a contract case or whatever, if you have a defendant with deep pockets, there are nuisance lawsuits, there are occasions where people will file frivolous claims, but if you are filing a constitutional claim on religious liberty, on religious accommodation, you are not going to have frivolous claims. No one is going to deliberately bring a frivolous religious liberty claim, rarely. We have not seen that problem in the courts and where we do, if we ever do, the nonmandatory, the discretionary rule 11 sanction could do. But to make a mandatory rule 11 sanction here when the religious liberty attorneys are going to have to be trying to persuade a court to change the existing precedent, to push the envelop is going to have a real chilling effect on that, and I do not think we need a real chilling effect on religious liberty.

I would hope that there would be reconsideration on this amendment and that it would pass.

□ 1300

The CHAIRMAN. The time of the gentleman from New York [Mr. NADLER] has expired.

(At the request of Mr. MOORHEAD and by unanimous consent, Mr. NADLER was allowed to proceed for 3 additional minutes.)

Mr. NADLER. I yield to the gentleman from California

Mr. MOORHEAD. Mr. Chairman, I think a lot of argument here is based upon a misunderstanding of what the law is presently and what we are doing to it.

Under sanctions in the present law it says if on a notice and a reasonable opportunity to respond the court determines that a subdivision had been violated the court may, subject to conditions stated below, impose an appropriate sanction upon the attorneys, law firms or parties who have violated subdivision (b) or are responsible for action. We changed that ''may'' to ''shall.'' But there is an awful lot of discretion there in the finding of whether there is a violation or not, and what any kind of a sanction, mild or otherwise, there should be. But that is present law.

We do take out of the bill the opportunity under motion to at the last minute, after it has been found they have violated the code by putting in amendments and other pleadings that should not be there, we give them 21 days to change their position, but that is after you are caught with the cookie jar in your hand, we say that they can change that. We have taken that 21-day grace period out and that is principally what the bill does to begin with.

I would like to say this as far as the National Association of Evangelicals and the Christian Legal Society. I have great respect for them. I have worked with them on many, many occasions. I think I have a 100-percent voting record with them, so I am not putting them down or anything else. But I do not think they understand what this is all about.

Mr. NADLER. Reclaiming my time, sir, I think they do understand. We do

not have a problem with the present law. But of course this bill would change the present law and what the Christian Legal Society and the National Association of Evangelicals are saying and what other religious groups that I have been speaking to in the last few days have said to me, is that making mandatory rule 11 sanctions, making it mandatory would have a chilling effect in this area. It may have a chilling affect in other areas and we are not talking about them. We do not have a problem with frivolous suits in civil rights and other areas and they are looking at pushing the envelop and they are very concerned about that.

Mr. MOORHEAD. If the gentleman will yield, that is of course not what this amendment is all about. It exempts a number of different acts of Congress from any portion of this thing which is certainly not in the present law, nothing that we have talked about before.

I will say this, as far as the National Association of Evangelicals who I know very well, they have not come in and testified, they have not commented to me about this in any way if they have a problem.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will struggle on this issue to be nonemotional. I will struggle because I remember 25 years ago the very day I returned to North Carolina to practice law in what was regarded and is regarded as a civil rights law firm. In the middle of the night someone came and set a fire to the law firm office before I had practiced law in that office one day.

I will struggle because I have seen how much courgage it takes for a plaintiff or a group of plaintiffs to come forward in the face of racial oppression and assert their civil rights.

I will struggle because I have been before judges, 99 percent of whom I would remind my colleagues here are members of the majority race in this country, and I have heard them not understand the underlying basis of a civil rights claim because they have no history to relate that claim to, and to have them in the final analysis find that some portion of the claim is frivolous because they just simply cannot relate to people being abused and having their rights abused in that way.

My colleagues, this is not about some kind of theoretical fear that is being expressed here. There is a concern with frivolous lawsuits, but I remind my colleagues that in this amendment, and I want the gentleman from California to read the amendment, starting at line 9 of the amendment it specifically says ''rule XI of the Federal Rules of Civil Procedure as in effect immediately before the effective date of such amendments shall apply with respect to such civil actions.'' This is not doing away with rule XI.

I have heard my colleague here, the gentleman from Michigan [Mr. CONYERS], read without anybody paying attention, apparently, the disparity in the percentages of frivolous and sanction cases that exist in civil rights cases, 7 percent of the cases yielding a substantially disproportionate share of the sanctions. But I will remind my colleagues that nobody comes forward in the South in the time in which I grew up and brought forward any kind of frivolous civil rights action. It took courage. It took running the risk that your House would be burned down; it took running the risk that your law office would be burned down; it took running the risk that your friends down the street who call you Mr. Charlie would not speak to you again if you brought to light the fact that the employer down the street was discriminating on the basis of race in hiring of people.

This is not some theoretical concern that is being expressed in this amendment. I beg of my colleagues to take this amendment seriously, and vote it up and agree to put this exception in, and provide the kind of protection that these hardworking people, these law-abiding people who simply want to have their civil rights vindicated are bringing to the courts.

Mr. SCOTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to add just one other point to this very briefly and that is that you could go through all of that what the gentleman from North Carolina said, and in fact you could have a winning lawsuit and still be forced to pay opposing attornerys' fees if you come in under an offer made sometime during the middle of trial.

Mr. Chairman, the reason that we have attorneys' fees provided in these kinds of cases is that the damage, the financial damage is ususally so small that you have an empty promise in discrimination laws if this amendment is not passed. The empty promise without attorneys' fees is you go to court and you will pay more than you could possibly get.

I would hope that this amendment would pass, would keep the law as it is, and that people who are discriminated against be vindicated and have those rights vindicated in court.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. Mr. Chairman, I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Just a point of winning a law suit and still being required to pay attorney's fees, this would not apply to any of these actions, would it not, because these are all Federal question issues and would not come up under the modified losers pay provisions in the bill which only apply to diversity cases?

Mr. SCOTT. If you are calling it a Federal question, then the passage of this amendment would have no effect in the gentleman's interpretation.

Mr. GOODLATTE. I agree with that; but they are two different types of actions. They are mutually exclusive of each other.

Mr. SCOTT. Mr. Chairman, I would say to the gentleman if that is his interpretation, then the passage would do no harm to the bill and it ought to be adopted just to make sure.

Mr. GOODLATTE. Mr. Chairman, if I can follow up because the comments of the gentleman from North Carolina are indeed impressive, is there something about, and this is what troubles me from my side, is there something about an attorney or an individual who misbehaves with one of those cases and incurs sanctions that would differ from somebody, regardless of their background, regardless of their race or age or sex or anything else in any of the other areas where we apply the ''shall'' provision, which is what the amendment does, instead of the ''may'' provision, which is what the gentleman wants to preserve for these particular issues?

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding.

I would just simply say to the gentleman, there is a predisposition, there is a disposition, and fortunately over time it is beginning to wane I would acknowledge, and I do not want to leave the impression that our whole Federal or State benches are still where they were 15 or 20 years ago, but I would submit to the gentleman that in these cases there is a substantially higher likelihood that goes beyond insignificant statistical probability, if you go back and look at the statistics that the gentleman from Michigan [Mr. CONYERS] was talking about, that a finding of frivolousness is going to be found in these cases.

Mr. GOODLATTE. Does the gentleman think that is changed based upon changing it from ''may'' to ''shall''? I mean, if there is a discriminatory predisposition that the gentleman describes, would that not also be likely to occur in a circumstance where the judge has the discretion under the law as it exists now?

Mr. WATT of North Carolina. If the gentleman will yield further, I think what the gentleman is doing is sanctioning by this bill that kind of attitude, and giving latitude to it by saying you shall make, you shall do this; and the finding of frivolousness that there will be an inclination to do it anyway, and once you add on to it the word ''shall'' what we have done here is sanctioned that kind of attitude.

At least under the other standard we can at least try to get in the head of the judge and say look, Judge, you are applying a different standard in noncivil rights cases than you are in civil rights cases and try to embarrass him. But once you give him that extra little piece of ammunition, the ''shall'' in this bill, you have given that judge

who may be inclined, the literary license he needs to abuse the system.

Mr. SCOTT. Mr. Chairman, in summary I think I do not want to get away from the point this is a decision a person has to make before they even have the nerve to come forward, and this is just one more barrier to scaring them and daring them to come forth and vindicate their rights in court.

Ms. NORTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I come forward as a former chair of the Equal Employment Opportunity Commission, very disquieted that in this bill mandatory sanctions could apply to civil rights actions, and disquieted on the basis of the record.

First, I ask my colleagues to be consistent. We have already exempted civil rights matters from the unfunded mandates bill and from the Regulatory Transition Act. Let us repeat that consistency here.

Why did we do it there and why should we do it here?

□ 1315

Civil rights actions are very difficult to bring. They always have been. They are more difficult to bring today than they were 30 years ago when the acts were passed. At that time getting an attorney was more likely because the discrimination was so widespread, and on the surface there was a bar, a private bar, that developed. Ten years after the act, when I came to chair the EEOC, that bar had virtually disintegrated. The reason is that when lawyers take an action under a civil rights case, they are taking a very large chance. They are hoping to get their fees back. They have to borrow money in order to mount a substantial case.

So if there is any hurdle in the way, what we found, even 10 years after the act—and we find 30 years after the act now—they hesitate and the bar itself simply was not available.

First of all, for a person to come forward, that plaintiff has to make a very difficult decision. She is almost always going against power. Who are the plaintiff's lawyers in the first place? These are usually small practitioners going up against counsel from large corporations. These people have lawyers on staff that can file endless motions to tie up these small practitioners whom we have said we want to bring these cases in order to vindicate civil rights.

Do we want people to bring these cases, or do we not want people to bring these cases? We have said in these two previous bills we do not need to destroy or disassemble the civil rights superstructure that we have put in place. We have not been inconsistent here.

Civil rights actions are different in all kings of ways. For example, for most of those actions, punitive damages are not available. Compensatory damages are often unavailable. Under Title VII, all you can get is your back pay. Most of these cases are settled by the time the case gets to court. The case has gone through some kind of conciliation often, or at least there has been an attempt to settle the case.

If we want to chill the right to bring a civil rights action, then we go back to these mandatory sanctions. I do not know where we could find a lawyer, almost all of them small practitioners, willing to come forward under these circumstances.

Mr. Chairman, the courts are very experienced. They know how to handle cases that are frivolous in the civil rights area. There have been hundreds of thousands of civil rights cases. This is a unique area of the law. We have encouraged people to come forward. We have continued to do so in the 104th Congress with the two bills I have named, the unfunded mandates bill and the Regulatory Transition Act.

I ask my colleagues please to be consistent. Let us stay together yet again on a civil rights provision. Let us support the Conyers amendment.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, yesterday I spoke in my opposition to this bill in general, and I will speak in favor of this amendment at least.

Mr. Chairman, I am sad to report that one of the great intellects, one of the great playwrights of the 20th century, died less than 3 weeks ago, Robert Bolt. Robert Bolt wrote ''A Man for All Seasons,'' and I commend that to my colleagues who are contemplating voting for this bill let alone voting against this amendment.

Let me quote very briefly from the body of the work, ''A Man for All Seasons.'' As you may recall, this is about Sir Thomas More.

Sir Thomas More found himself in the position of having to defend the church, and there was an argument over religious freedom. And this was not the kind of argument that we may be having here today. He was having an argument with his prospective son-in-law, a man named William Roper. William Roper is described by Robert Bolt in a manner that I think might fit some of the people who are not thinking clearly about this today: ''William Roper, a stiff body in an immobile face with little imagination and moderate brain but an all too consuming rectitude, which is his cross, his solace, and his hobby.'' And I feel we have many people here like that today, Mr. Chairman.

So when Sir Thomas More was confronting his prospective son-in-law, young Mr. Roper, when Roper wanted to have someone seized and arrested because of their views, Roper says, ''There is! God's law.''

And Sir Thomas More said, ''Then God can arrest him.''

Then Roper said this is ''sophistication upon sophistication''—the kind of argument we are hearing on this floor today.

And More said, ''No, sheer simplicity. The law, Roper, the law. I know what's legal not what's right. And I'll stick to what's legal.''

''Then you set man's law above God's!

''No, far below; but let me draw your attention to a fact—I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. I'm no voyager. But in the thickets of the law, oh, there I'm a forester. I doubt if there's a man alive who could follow me there, thank God.''

And if he should go, ''if he was the Devil himself, until he broke the law!''

Then Roper says, ''So now you'd give the Devil benefit of law!''

Then Sir Thomas More said, ''Yes. What would you do? Cut a great road through the law to get after the Devil?''

Roper said, ''I'd cut down every law in England to do that.''

More said, ''Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.''

Mr. Chairman, we need to give the Devil the safety of law for our own benefit, for our own safety's sake. And on the question of religious freedom, how can we even be contemplating such a change as is being imagined in the underlying law which we are proposing to pass in this bill?

When the last law is down and the Devil turns on you, where will we hide?

Loser pays. Loser pays is a vestige of this history in England, and in which class warfare prevails. This is the aristocrats against the commoners. That is exactly what it is all about.

No one in good conscience, if they are going to think today, can find themselves resisting this amendment, and I hope and I pray that Members will think further upon what we are doing here.

I know the gentleman from California [Mr. MOORHEAD] as a colleague. I have had the opportunity to speak with him. I respect him. I think he is among the most decent persons that I have met in the Congress. I respect his civility. Some of the people I have talked to about this bill I respect as libertarians.

The CHAIRMAN. The time of the gentleman from Hawaii [Mr. ABERCROMBIE] has expired.

(By unanimous consent, Mr. ABERCROMBIE was allowed to proceed for 2 additional minutes.)

Mr. ABERCROMBIE. Mr. Chairman, I find myself discussing this not as a question of partisanship, not as a question of Democrats versus Republicans.

I do not find myself in a position, Mr. Chairman—and I refer again to my good friend, the gentleman from California, and some of the others I have discussed this with—of looking at this even as a question of winners and losers. On the particular issue, I think we are ill-served by this contract.

This is not a question of loser pays in regard to clients and lawyers. This is a question of whether we are losing as freedom-loving individuals. Some of my libertarian friends that I have on the other side of the aisle find themselves stumbling for an explanation to me as to how they can be for this. This is the ultimate defense of the individual against the State.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. ABERCROMBIE. Yes, I yield to the gentleman from Illinois.

Mr. DURBIN. Mr. Chairman, the gentleman has given the most classic conservative argument I have ever heard. He is asking for us to protect our rights as individuals against forces that otherwise would prevail, whether they are the power of government or the power of wealth. The reference he has made to ''a man for all seasons'' is one of my favorites. I thank the gentleman for bringing it into this debate.

Mr. ABERCROMBIE. Mr. Chairman, I thank the gentleman.

As I bring this up, let me say that I make it a practice of reading this play at least once a year to remind myself of why I am in the Congress. This is one of the reasons why I am here, and I want to tell the Members that this debate has energized me. Sometimes I get up tired in the morning, and I am sure we all have done that. I read in the Post today how tired we all are because we have been moving at a fast pace. That is all right. I do not mind myself, but I realize I am here dealing with the fundamentals, not just me but all of us here, my dear friends and colleagues. We are dealing with the fundamentals. This is what this is all about.

More paid with his head. More paid with his head for standing up for freedom. We will not have to do that today. This is my political head or your political head. What difference does that make? Nobody is going to be shot coming out of this Chamber. Nobody is going to be arrested under these circumstances, not coming out of here. But it is not rhetoric for those whom it affects. And when it comes to religion, this is the first, Mr. Chairman. The first of all our amendments, Mr. Chairman, is freedom of religion, Minus this, we lose the entire basis of what the United States and democracy is all about.

I plead with the Members, please, to examine the basis of what we are doing here. It is not important to pass everything. It is not important to say yes, every ''i'' was dotted and every ''t'' was crossed in this contract, regardless of how we have come to feel about it. That is why we are having this debate.

I wish we had had more time in the committee hearing, but we did not. I appeal to the Members, at least on this amendment, please realize that the basis is not Democrat versus Republican. It is a matter of standing up for the fundamentals, standing up for the freedom of the people of the United States.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MOORHEAD. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 194, noes 229, not voting 11, as follows:

[Roll No. 205]

AYES—194

Abercrombie	Gilman	Owens
Ackerman	Gonzalez	Pallone
Andrews	Goodlatte	Pastor
Baldacci	Gordon	Payne (NJ)
Barcia	Green	Payne (VA)
Barrett (WI)	Gutierrez	Pelosi
Becerra	Hall (OH)	Peterson (FL)
Beilenson	Hamilton	Peterson (MN)
Bentsen	Harman	Pomeroy
Berman	Hastings (FL)	Poshard
Bevill	Hayes	Rahall
Bishop	Hefner	Reed
Bonior	Hilliard	Reynolds
Borski	Hinchey	Richardson
Boucher	Hobson	Rivers
Browder	Holden	Roemer
Brown (CA)	Hoyer	Rose
Brown (FL)	Jackson-Lee	Roybal-Allard
Brown (OH)	Jacobs	Rush
Bryant (TX)	Johnson (SD)	Sabo
Chapman	Johnson, E.B.	Sanders
Clay	Johnston	Sawyer
Clayton	Kanjorski	Schroeder
Clement	Kaptur	Schumer
Clyburn	Kennedy (MA)	Scott
Coleman	Kennedy (RI)	Serrano
Collins (IL)	Kennelly	Sisisky
Collins (MI)	Kildee	Skaggs
Conyers	Kleczka	Skelton
Costello	Klink	Slaughter
Coyne	LaFalce	Spratt
Cramer	Lantos	Stark
Danner	Laughlin	Stenholm
Davis	Levin	Stokes
de la Garza	Lewis (GA)	Studds
DeFazio	Lincoln	Stupak
DeLauro	Lipinski	Tanner
Dellums	Lofgren	Taylor (MS)
Deutsch	Luther	Tejeda
Dicks	Maloney	Thompson
Dingell	Manton	Thornton
Dixon	Markey	Thurman
Doggett	Martinez	Torres
Dooley	Mascara	Torricelli
Doyle	Matsui	Towns
Durbin	McCarthy	Traficant
Edwards	McDermott	Tucker
Ehlers	McNulty	Velazquez
Engel	Meehan	Vento
Eshoo	Menendez	Visclosky
Evans	Mfume	Volkmer
Farr	Miller (CA)	Ward
Fattah	Mineta	Waters
Fazio	Minge	Watt (NC)
Fields (LA)	Mink	Watts (OK)
Filner	Moakley	Waxman
Foglietta	Mollohan	Weldon (FL)
Ford	Montgomery	Williams
Fox	Murtha	Wilson
Frank (MA)	Nadler	Wise
Frost	Neal	Woolsey
Furse	Oberstar	Wyden
Gejdenson	Obey	Wynn
Gephardt	Ortiz	Yates
Geren	Orton	

NOES—229

Allard	Frelinghuysen	Myers
Archer	Frisa	Myrick
Armey	Funderburk	Nethercutt
Bachus	Gallegly	Neumann
Baesler	Ganske	Ney
Baker (CA)	Gekas	Norwood
Baker (LA)	Gilchrest	Nussle
Ballenger	Gillmor	Oxley
Barr	Goodling	Packard
Barrett (NE)	Goss	Parker
Bartlett	Graham	Paxon
Barton	Greenwood	Petri
Bass	Gunderson	Pickett
Bateman	Gutknecht	Pombo
Bereuter	Hall (TX)	Porter
Bilbray	Hancock	Portman
Bilirakis	Hansen	Pryce
Bliley	Hastert	Quillen
Blute	Hastings (WA)	Quinn
Boehlert	Hayworth	Radanovich
Boehner	Hefley	Ramstad
Bonilla	Heineman	Regula
Bono	Herger	Riggs
Brewster	Hilleary	Roberts
Brownback	Hoekstra	Rogers
Bryant (TN)	Hoke	Rohrabacher
Bunn	Horn	Ros-Lehtinen
Bunning	Hostettler	Roukema
Burr	Houghton	Royce
Burton	Hunter	Salmon
Buyer	Hutchinson	Sanford
Callahan	Hyde	Saxton
Calvert	Inglis	Scarborough
Camp	Istook	Schaefer
Canady	Johnson (CT)	Schiff
Cardin	Johnson, Sam	Seastrand
Castle	Jones	Sensenbrenner
Chabot	Kasich	Shadegg
Chambliss	Kelly	Shaw
Chenoweth	Kim	Shays
Christensen	King	Shuster
Chrysler	Kingston	Skeen
Clinger	Klug	Smith (MI)
Coble	Knollenberg	Smith (NJ)
Coburn	Kolbe	Smith (TX)
Collins (GA)	LaHood	Smith (WA)
Combest	Largent	Solomon
Cooley	Latham	Souder
Cox	LaTourette	Spence
Crane	Lazio	Stearns
Crapo	Leach	Stockman
Cremeans	Lewis (CA)	Stump
Cubin	Lewis (KY)	Talent
Cunningham	Lightfoot	Tate
Deal	Linder	Tauzin
DeLay	Livingston	Taylor (NC)
Diaz-Balart	LoBiondo	Thomas
Dickey	Longley	Thornberry
Doolittle	Lowey	Tiahrt
Dornan	Lucas	Torkildsen
Dreier	Manzullo	Upton
Duncan	Martini	Vucanovich
Dunn	McCollum	Waldholtz
Ehrlich	McCrery	Walker
Emerson	McHale	Walsh
English	McHugh	Wamp
Ensign	McInnis	Weller
Everett	McIntosh	White
Ewing	McKeon	Whitfield
Fawell	Metcalf	Wicker
Fields (TX)	Meyers	Wolf
Flanagan	Mica	Young (AK)
Foley	Miller (FL)	Young (FL)
Forbes	Molinari	Zeliff
Fowler	Moorhead	Zimmer
Franks (CT)	Moran	
Franks (NJ)	Morella	

NOT VOTING—11

Condit	McDade	Rangel
Flake	McKinney	Roth
Gibbons	Meek	Weldon (PA)
Jefferson	Olver	

☐ 1347

The Clerk announced the following pairs:

On this vote:

Mr. Jefferson for, with Mr. Roth against.

Mr. Flake for, with Mr. Weldon of Pennsylvania against.

Mr. DAVIS and Mr. SCHUMER changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, I offer an amendment. I would like to say I will not ask for a recorded vote on this amendment.

The CHAIRMAN. The gentleman is recognized for debate only on Mr. GOODLATTE's time. The Chair will have to reserve the ability to separately recognize for the purpose of offering an amendment.

PARLIAMENTARY INQUIRIES

Mr. GOODLATTE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GOODLATTE. Mr. Chairman, do I have the ability to yield to the gentleman from Michigan [Mr. SMITH] for the purpose of offering an amendment?

The CHAIRMAN. The gentleman has only the ability to yield for the purpose of debate. The amendment must be offered by the gentleman from Michigan in his own right.

Mr. GOODLATTE. I yield to the gentleman for the purpose of debate. I apologize to the gentleman that he will not be allowed to offer an amendment under these circumstances.

Mr. SMITH of Michigan. Mr. Chairman, then I would yield back to the gentleman, because I am still in hopes that I can have the 5 minutes to offer my amendment.

Mr. GOODLATTE. Mr. Chairman, that being the case, I yield back my time.

Mr. SMITH of Michigan. Mr. Chairman, I have a parliamentary inquiry

The CHAIRMAN. The gentleman will state it.

Mr. SMITH of Michigan. Inasmuch as my amendment was printed in the RECORD, do I understand I have a right to have a vote on that amendment?

The CHAIRMAN. If the gentleman is recognized before the expiration of 7 hours at 2:20, the time set for consideration of the bill under the rule, then the gentleman will be accorded the opportunity to offer and have a vote upon his amendment.

Mr. SMITH of Michigan. It is my understanding, Mr. Chairman, that I have the right to be recognized and to have that vote on the amendment, even if there is no debate, is that correct?

The CHAIRMAN. The gentleman is correct, if the gentleman offers his amendment before 2:20.

AMENDMENT OFFERED BY MR. BRYANT OF TEXAS

Mr. BRYANT of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BRYANT of Texas: AMENDMENT NO. 1: Page 4, insert the following after line 21 and redesignate the succeeding paragraph accordingly:

''(8) This subsection applies only to a claim brought against a small business concern as defined under section 3 of the Small Business Act.''.

Mr. BRYANT of Texas. Mr. Chairman, the bill before the House today, as those who have carefully watched this debate now, is one that would for the first time in American history shift the burden from where it has always been to the loser in a lawsuit to pay the costs of the winner for bringing the lawsuit, so that if a person brings a case, even though it appears to be meritorious, even though it is a case that anyone would agree could go either way, when he accidentally, for some reason, unforeseeably loses, he then faces the enormous burden of paying all of the expenses of the person on the other side. The result of that, of course, is to make it very difficult for people of little means to ever have access to our system of justice in the United States.

Now, the rationale given for this bill is that we have to somehow, according to the advocates of it, make business life a little bit easier for the overburdened manufacturer, the small manufacturer out there, who cannot do business because he is constantly faced with the possibility of being sued and losing.

Yet the bill applies to any type of manufacturer of any size whatsoever. When we complain that the bill is simply making it easy for the biggest and the largest and the strongest companies in our country to produce products of an inferior type that might later injure someone, and yet never be sued, they say oh, no, we are not trying to protect the big boys. We are just trying to create an even playing field. We are really looking at a way to protect the little guys.

Well, the amendment which I have before the House at this moment does just that. What it says is that the loser-pay bill on the floor today only applies when the defendant is a small business as defined by the section 3 of the Small Business Act. What is that? That is a business with 500 or fewer employees.

I submit to you that we are embarking on a mission here for which we have no evidence, for which we have been given no direction based upon any empirical data. If we are going to do that, for goodness' sake, we ought to limit the effect to small businesses and not allow the biggest of the businesses, the ones that can well afford to pay their own costs, to be exempt from any type of a lawsuit that is brought against them, in effect because no one will ever dare to bring a lawsuit for fear they might lose because of the color or their skin or the side of the head on which they part their hair or some other frivolous reason.

All of those involved in litigation understand there is always a risk that a case can be lost, even a case that is firmly grounded as to the facts of the case and the law. When you add the loser-pay rule to our Federal jurisprudence, you put an average person in the extremely difficult position of deciding whether to risk the equity in their homes or the money that they put away for their children before pursuing even the most meritorious of claims.

Let me point out, this does not hurt rich folks because they can afford to absorb the costs. It does not hurt poor folks because a poor person is not going to be in any position to pay an opposing side's attorney fees. They can simply get their obligation in that regard discharged in a bankruptcy proceeding. But it goes to middle class Americans who do not have enough to be unconcerned about the costs, and have a great deal to lose if they are so unhappy so as not to win a case which otherwise appears to be meritorious.

If we are going to have a law like that, and I do not think we should, but if we are going to have a law like that on the books, by golly, the effect of it ought to be limited to cases in which the defendant is a small business, not a gigantic business that can well afford to handle its own litigation costs.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman, because in the closing hours on this debate, the gentleman has done as much to improve it as any provision that has been brought. It would be a protection only for small businesses who would be exempt from the loser-pay feature of this bill.

Mr. BRYANT of Texas. That is correct.

Mr. CONYERS. I am pleased to support it and accept it on our side, and I hope that because of the limited debate opportunity that the gentleman has, that the other side would consider it carefully in terms of accepting it as well.

Mr. BRYANT of Texas. Mr. Chairman, reclaiming my time, I thank the gentleman for his comments.

To recapitulate, the amendment says that the loser-pay bill on the floor today will only apply when the defendant is a small business, that is, one with 500 employees or less. A small business is defined in the amendment as the term ''small business'' is defined by section 3 of the Small Business Administration Act.

Mr. Chairman, I urge Members' support for the amendment.

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Texas.

Mr. Chairman, his amendment would limit the settlement and attorneys fees provisions of H.R. 988 to cases against small business. We do not intend to limit the application of these provisions to a large or a small business. As now written under the bill, it applies to

any litigant in Federal court under the diversity statute.

The purpose of this legislation is to try and encourage all parties to settle and not go to trial whenever possible. I do not know what percentage of cases filed under the diversity statute are filed by small businesses or how often they are the defendants, but loser-pays should be applied to everybody, and not be based on the size of a business to the exclusion of ordinary litigants. The focus of loser-pays is on the strength of a claim and to discourage weak and frivolous cases.

Mr. Chairman, I urge a ''no'' vote on this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. BRYANT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BRYANT of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 177, noes 214, not voting 13, as follows:

[Roll No. 206]

AYES—177

Abercrombie
Baesler
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Ensign
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Schroeder
Schumer
Scott
Serrano
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—244

Ackerman
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—13

Andrews
Condit
Cox
Flake
Gibbons
Jefferson
McDade
McKinney
Meek
Rangel
Roth
Torricelli
Williams

□ 1417

The Clerk announced the following pairs:

On this vote:

Mr. Flake for, with Mr. Cox against.

Mr. Jefferson for, with Mr. Roth against.

Mrs. FOWLER changed her vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. INGLIS of South Carolina. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The gentleman is recognized for 3 minutes.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, I appreciate the gentleman yielding to me.

It is somewhat of a frustrating experience to have amendments, as Members from both sides of the aisle have had only to be pre-empted and ultimately denied the opportunity to offer those amendments.

The members of that committee are given priority. Mr. Chairman, the members of that committee are essentially all attorneys, so those of us who are members of other occupations get little opportunity to say ''wait a minute.''

Mr. Chairman, the title of this bill is ''The Attorney Accountability Act.'' In fact, this bill as currently written does little to make attorneys accountable. The only part of this bill that does anything to make lawyers accountable for their actions is the change in rule XI.

That change, requiring a mandatory penalty for violation of the rule, applies only in the small number of cases in which an attorney is actually sanctioned by a judge under rule XI. As we have heard from most everybody, Mr. chairman, there are very few sanctions that take place. If ever this sanction does take place, the judge even has the right to waive the penalty on the attorney and assess all of the sanction penalties on the client.

Mr. Chairman, my amendment would have required attorneys to accept some responsibility for their actions by making them liable for 50 percent of the unpaid costs of unnecessary litigation that the client does not pay fully. I think this is important.

Mr. Chairman, under H.R. 988 as currently drafted, attorneys seeking a big, contingency fee payday have an incentive to litigate weak cases aggressively. If the client wins, the lawyer cashes in. If the client loses, the client is stick with the bill. It's even better if the client's poor—then no one has to pay.

My amendment makes an attorney liable for half of any attorney's fee award that a client can't pay. This sanction is not unduly harsh. There can be no award of fees unless:

First, a settlement is offered;

Second, the offer is rejected; and

Third, the jury returns a verdict less than the offer.

In the few cases in which these conditions are met, the award is limited:

First, it's capped at the amount of the offeree's expenses;

Second, it's limited to the actual cost incurred from the time of the offer through the end of the trial; and

Third, the judge has discretion to moderate or waive the penalty when it would be manifestly unjust.

These modest steps are necessary if we truly intend to make attorneys accountable. My amendment tells lawyers: This is a court, not a lottery office. You're an officer of this court. As an officer of this court, you have a responsibility to the court and the other litigants not to waste their time and money. And if you ignore these responsibilities, you can be held liable. I ask the House to vote ''yes'' on the Smith amendment to H.R. 988.

Mrs. SCHROEDER. Mr. Chairman, I regret that the time constraints imposed by the rule precluded consideration of the Harman amendment, which replaces H.R. 988's ''loser pays'' provision with the attorneys fees standard in the securities bill.

The goal of deterring frivolous lawsuits is a worthy one. However, H.R. 988's loser pays provision goes well beyond that; it gives a wealthy party the power to slam the courthouse door shut in the face of a middle-income or poor individual with a reasonably strong case. The Harman amendment strikes a better balance—it deters suits that are frivolous, but allows ordinary people to pursue close cases.

Assume a case in which the damages are high—for example, $500,000—and the amount of damages is essentially undisputed. However, the defendant's liability is not a certainty. The plaintiff's attorney advises him that the liability question is fairly strong, but it isn't a slam dunk. The attorney estimates that the odds are perhaps 70–30 in favor of winning the liability question. In this kind of case, under our current system, the plaintiff will either win a judgment of something very close to $500,000, or will win nothing. This is clearly not a frivolous case; it is a reasonable case for the plaintiff to pursue, even if, in the end, he loses. Under current law, even a poor or middle-income plaintiff will be able to pursue this case, because he can obtain representation on a contingency fee basis, and does not assume any risk of having to pay the other side's attorneys fees if he loses.

But let us assume that H.R. 988 is in effect. Assume that the defendant is a large corporation, whose decisionmaking with respect to the case is not particularly affected by the possibly of recovering its attorneys fees, because they are considered to be a routine cost of doing business. The defendant makes a $1 offer to the plaintiff, which is filed and served very early in the case. The defendant's primary motivation is not to reach a reasonable settlement; it is to try to deter the lawsuit altogether by playing on the plaintiff's unwillingness to roll the dice on his life savings on a 70–30 gamble.

The plaintiff is a middle-income individual who has a contingency-fee agreement with his attorney, and has managed to salt away some savings, which he hopes to use for his children's college education, or perhaps to support either his own retirement, or his parents in the event they need his support later in their lives.

Under the terms of section 2 of H.R. 988—the Goodlatte loser pays provision—if the plaintiff loses the case, he will end up losing his life savings to pay the defendant's attorneys fees. These fees will be considerable; because the plaintiff has a contingency fee agreement with his own attorney, he will be required to pay the defendant a fee calculated on an hourly rate limited only to the number of hours his own attorney worked. Because liability was a close question, his own attorney worked many hours to prepare this case. There is no reasonable counter-offer the plaintiff can make that will protect him from having to pay attorneys fees if he loses, because the only offer that would protect him would be an offer to dismiss his case. Because H.R. 988 does not give him a way to avoid risking his life savings if the defendant offers him $1, the plaintiff has to be willing to gamble his life savings in order to pursue a case with high damages and a 70–30 probability of winning liability. The Harman amendment, by contrast, protects the individual who seeks access to the courts in a case where liability is reasonably likely, but not a slam dunk. Unless we adopt the Harman amendment, the results of this bill are:

First, the middle-income plaintiff, who is strongly risk-averse, can pursue even a relatively strong case only by putting his life savings on the line.

Second, the bargaining power between individuals and large corporations is very uneven, because the plaintiff is risking his life savings, while all of the risks on the defendant's side are absorbable as a cost of doing business.

Third, the court cannot step in to level this playing field, because even though H.R. 988 allows the court to decline to order the loser to pay if the court finds that requiring payment would be manifestly unjust, the report filed by the Judiciary Committee states very clearly that the standard governing this exception is ''an exceptionally high one, extending well beyond the relative wealth of the parties.'' Thus, the fact that the winning defendant is a large corporation, and the losing plaintiff is a middle-income plaintiff who will have to use all of his life savings to pay the defendant's attorneys fees, is not something that the Republican majority believes is a manifest injustice.

The respected conservative British magazine, the Economist, has called for the repeal of the so-called English rule, that is, loser pays, in England, precisely because it shuts the courthouse door to middle-income parties. Let's not make the mistake of giving large corporations and wealthy individuals an unfair advantage in our civil justice system. The American way is equal justice under law. H.R. 988 replaces that with a system of all the justice you can afford. I urge adoption of the Harman amendment.

The CHAIRMAN. All the time has expired.

The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore, Mr. BARRETT of Nebraska, having assumed the chair, Mr. HOBSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 988), to reform the Federal civil justice system, pursuant to House Resolution 104, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. I certainly am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit H.R. 988 back to the Committee on the Judiciary with instruction to report back forthwith with the following amendment:

Strike section 2 of the bill, and insert the following:

SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION.

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

''(e) AWARDS OF FEES AND EXPENSES.—

''(1) AUTHORITY TO AWARD FEES AND EXPENSES.—In any action over which the court has jurisdiction under this section, if the court enters a final judgment against a party litigant on the basis of a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether (A) the position of the losing party was not substantially justified, (B) imposing fees and expenses on the losing party or the losing party's attorney would be just, and (C) the cost of such fees and expenses to the prevailing party is substantially burdensome or unjust. If the court makes the determinations described in clauses (A), (B), and (C), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the position of the losing party was substantially justified shall be made on the basis of the record in the action for which fees and other expenses are sought, but the burden of persuasion shall be on the prevailing party.

''(2) SECURITY FOR PAYMENT OF COSTS IN CLASS ACTIONS.—In any private action arising under this section that is certified as a class action under the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff

class, the plaintiff class, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of fees and expenses that may be awarded under paragraph (1).

''(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

''(4) ALLOCATION AND SIZE OF AWARD.—The court, in its discretion, may—

''(A) determine whether the amount to be awarded pursuant to this subsection shall be awarded against the losing party, its attorney, or both; and

''(B) reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the action.

''(5) AWARD IN DISCOVERY PROCEEDINGS.—In adjudicating any motion for an order compelling discovery or any motion for a protective order made in any action over which the court has jurisdiction under this section, the court shall award the prevailing party reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorneys' fees, unless the court finds that special circumstances make an award unjust.

''(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

''(7) PROTECTION AGAINST ABUSE OF PROCESS.—In any action to which this subsection applies, a court shall not permit a plaintiff to withdraw from or voluntarily dismiss such action if the court determines that such withdrawal or dismissal is taken for purposes of evasion of the requirements of this subsection.

''(8) DEFINITIONS.—For purposes of this subsection—

''(A) The term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees and expenses. The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of services furnished.

''(B) The term 'substantially justified' shall have the same meaning as in section 2412(d)(1) of title 28, United States Code.''.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. CONYERS] is recognized for 5 minutes.

Mr. CONYERS. Mr. Speaker, this has been a long 2 days on a bill that has presented a lot of problems to people. I am, on the motion to recommit, introducing a concept that was presented by the gentlewoman from California [Ms. HARMAN] which would limit the so-called loser pays provisions to those cases where the settlement offer was reasonable and made in good faith.

This is the same standard being adopted in the context of the Republican bill on securities litigation, H.R. 1058. This is the precise language in the Republican bill on securities scheduled to be on the floor shortly.

I would hope that my Republican colleagues would be able to see the logic of extending the same standard to injured tort victims as they do to stockholders. If someone loses a limb in a product liability case, they should have the same access to justice as an investor who has received fraudulent information.

The English rule, which requires losers to pay the legal fees of winners, which I had not thought would ever be popular in America, since we have the American rule, would substantially eliminate justice for the middle class members of our society.

As in England, those without a significant financial cushion will simply be unable to afford the risks of losing litigation.

Ms. HARMAN. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentlewoman from California.

Ms. HARMAN. Mr. Speaker, I thank the gentleman for his heroic attempt to allow me to offer an amendment that is now part of the motion to recommit.

Essentially the motion would borrow fee-shifting provisions from the 1980 Equal Access To Justice Act, which is now a Federal law, and from the precise language that will be offered later today in the securities litigation reform bill by the gentleman from California [Mr. COX], which sets up a three-part standard for fee shifting. We feel that this would be much more fair than the language of the gentleman from Virginia [Mr. GOODLATTE] in the present bill.

Mr. Chairman, I would commend the gentleman from Virginia [Mr. GOODLATTE] for his enormous effort to provide a standard that is fair, but I would point out that in making that standard mandatory, he could very well cause unfair results in close cases and the Cox language, which we will debate fully later, would take care of those problems.

I would urge support for the motion to recommit, and I would urge consideration of this much better language.

Mr. CONYERS. Mr. Speaker, in closing, the loser pays is a phrase that appeals to everyone who has heard it. It removes itself to anecdotes about court cases that appeared or produced an absurd or abusive outcome, but government by anecdote can produce disastrous policy.

Although the Contract With America claims that the loser pays provision is intended to penalize frivolous lawsuits and discourage the filing of weak cases, it is almost certain to have adverse consequences which limit access to justice.

The Harman amendment to recommit essentially cushions some of the worst features that now exist in the bill, and, as I have said before, it duplicates the bill on securities litigation by adopting the very same standard.

Please support the motion to recommit this bill.

Mr. MOORHEAD. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from California [Mr. MOORHEAD] is recognized for 5 minutes.

Mr. MOORHEAD. Mr. Speaker, the motion to recommit, unlike the loser pays language in H.R. 988, would take control out of the hands of the party and give it to the courts.

Moreover, an award of attorneys' fees under this amendment is merely discretionary with the court and not mandatory, like the language of H.R. 988. This amendment would also make the losing party's lawyer vulnerable for attorneys' fees.

This approach completely overlooks the fact that a decision to settle the case or press the case to trial is a decision of the party and not their lawyer. The lawyer cannot settle a case without the consent of his client.

The ultimate decision must be the client's as to whether a settlement is made or not. If the approach in this amendment were adopted, the lawyer would have to evaluate every case with a view toward his own liability, which would easily conflict with the interests of the party he purports to represent.

Mr. Speaker, this amendment, while appropriate for securities cases, should not be applied across the board. It will gut the loser pays language in H.R. 988. I urge its defeat.

Mr. Speaker, I yield the balance of my time to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for yielding to me, and I thank the chairman of the subcommittee for his fine work on this legislation, and the other side for the very civil way this debate has been conducted.

However, Mr. Speaker, I must rise in opposition to this motion to recommit, because it will return us to the situation we gave right now.

☐ 1430

It will eliminate the opportunity we have to truly say that when you go into Federal court, you have to be responsible, you have to be prepared to take responsibility for your own actions. By giving to the judge the discretion of whether or not to apply attorneys' fees, you will put us back to the situation we have right now with rules like rule 11, which has the effect of saying, ''Yes, we have sanctions, but, gee, maybe we wont't apply them,'' and the evidence is that they have not been applied.

There are some other problems with this amendment. For one thing, this amendment incorporated in the motion to recommit could allow the court to require that the winning party's legal fees be paid by the losing party's attorney.

This is a very wrongheaded concept in American justice. You should not ever drive a wedge between anybody and their lawyer who has all kinds of ethical responsibilities in the representation of their client.

Ms. HARMAN. Mr. Chairman, will the gentleman yield just for one question?

Mr. MOORHEAD. I yield to the gentlewoman from California.

Ms. HARMAN. Is this not the precise language that will be offered in the next bill we take up, the securities litigation bill, that was drafted by the gentleman from California [Mr. COX], including the possibility that attorneys could pay the fee awards?

Mr. GOODLATTE. I have to say I am not on the committee who produced that bill, so I do not know. You may be correct. If so, I will attempt to change that language in that bill.

But the point is here that if we take away the mechanism that has been set up in this bill, we will have eliminated all of the incentives we created to settle cases, all of the incentives we have created to not bring frivolous, fraudulent, or nonmeritorious lawsuits in U.S. district court. The compromise that we have come up with as changed from the original bill is a very, very good effort to control the overload of lawsuits in our courts without having to go back to a system now where there is no pressure on some individuals not to be responsible when they decide to bring an action in court.

I strongly urge the defeat of this motion to recommit.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 232, noes 193, not voting 10, as follows:

[Roll No. 207]

AYES—232

Allard	Ballenger	Bass
Archer	Barcia	Bereuter
Armey	Barr	Bilbray
Bachus	Barrett (NE)	Bilirakis
Baker (CA)	Bartlett	Bliley
Baker (LA)	Barton	Blute
Boehlert	Graham	Paxon
Boehner	Greenwood	Payne (VA)
Bonilla	Gunderson	Peterson (MN)
Bono	Gutknecht	Petri
Brewster	Hall (TX)	Pombo
Brownback	Hancock	Porter
Bryant (TN)	Hansen	Portman
Bunn	Hastert	Pryce
Bunning	Hastings (WA)	Quillen
Burr	Hayworth	Quinn
Burton	Hefley	Radanovich
Callahan	Heineman	Ramstad
Calvert	Herger	Regula
Camp	Hilleary	Riggs
Canady	Hobson	Roberts
Castle	Hoekstra	Rogers
Chabot	Hoke	Rohrabacher
Chambliss	Horn	Roukema
Chenoweth	Hostettler	Royce
Christensen	Houghton	Salmon
Chrysler	Hunter	Sanford
Clinger	Hutchinson	Saxton
Coble	Hyde	Scarborough
Coburn	Inglis	Schaefer
Collins (GA)	Istook	Schiff
Combest	Johnson, Sam	Seastrand
Cooley	Jones	Sensenbrenner
Cox	Kasich	Shadegg
Crane	Kelly	Shaw
Crapo	Kim	Shays
Cremeans	Kingston	Shuster
Cubin	Klug	Skeen
Cunningham	Knollenberg	Smith (MI)
Davis	Kolbe	Smith (NJ)
de la Garza	LaHood	Smith (TX)
Deal	Largent	Smith (WA)
DeLay	Latham	Solomon
Dickey	Leach	Souder
Doolittle	Lewis (CA)	Spence
Dornan	Lewis (KY)	Stearns
Dreier	Lightfoot	Stenholm
Duncan	Linder	Stockman
Dunn	Livingston	Stump
Ehlers	LoBiondo	Talent
Emerson	Lucas	Tate
English	Manzullo	Tauzin
Ensign	McCollum	Taylor (MS)
Everett	McCrery	Taylor (NC)
Ewing	McHugh	Thomas
Fawell	McInnis	Thornberry
Fields (TX)	McIntosh	Tiahrt
Flanagan	McKeon	Torkildsen
Foley	McNulty	Upton
Forbes	Metcalf	Vucanovich
Fowler	Meyers	Waldholtz
Fox	Mica	Walker
Franks (CT)	Miller (FL)	Walsh
Franks (NJ)	Minge	Wamp
Frelinghuysen	Molinari	Watts (OK)
Frisa	Montgomery	Weldon (FL)
Funderburk	Moorhead	Weldon (PA)
Gallegly	Morella	Weller
Ganske	Myers	White
Gekas	Myrick	Whitfield
Geren	Neumann	Wicker
Gilchrest	Ney	Wolf
Gillmor	Norwood	Young (AK)
Gilman	Nussle	Young (FL)
Gingrich	Ortiz	Zeliff
Goodlatte	Oxley	Zimmer
Goodling	Packard	
Goss	Parker	

NOES—193

Abercrombie	Clayton	Engel
Ackerman	Clement	Eshoo
Andrews	Clyburn	Evans
Baesler	Coleman	Farr
Baldacci	Collins (IL)	Fattah
Barrett (WI)	Collins (MI)	Fazio
Bateman	Conyers	Fields (LA)
Becerra	Costello	Filner
Beilenson	Coyne	Foglietta
Bentsen	Cramer	Ford
Berman	Danner	Frank (MA)
Bevill	DeFazio	Frost
Bishop	DeLauro	Furse
Bonior	Dellums	Gejdenson
Borski	Deutsch	Gephardt
Boucher	Diaz-Balart	Gonzalez
Browder	Dicks	Gordon
Brown (CA)	Dingell	Green
Brown (FL)	Dixon	Gutierrez
Brown (OH)	Doggett	Hall (OH)
Bryant (TX)	Dooley	Hamilton
Buyer	Doyle	Harman
Cardin	Durbin	Hastings (FL)
Chapman	Edwards	Hayes
Clay	Ehrlich	Hefner
Hilliard	McHale	Schroeder
Hinchey	Meehan	Schumer
Holden	Menendez	Scott
Hoyer	Mfume	Serrano
Jackson-Lee	Miller (CA)	Sisisky
Jacobs	Mineta	Skaggs
Johnson (SD)	Mink	Skelton
Johnson, E. B.	Moakley	Slaughter
Johnston	Mollohan	Spratt
Kanjorski	Moran	Stark
Kaptur	Murtha	Stokes
Kennedy (MA)	Nadler	Studds
Kennedy (RI)	Neal	Stupak
Kennelly	Nethercutt	Tanner
Kildee	Oberstar	Tejeda
King	Obey	Thompson
Kleczka	Olver	Thornton
Klink	Orton	Thurman
LaFalce	Owens	Torres
Lantos	Pallone	Torricelli
LaTourette	Pastor	Towns
Laughlin	Payne (NJ)	Traficant
Lazio	Pelosi	Tucker
Levin	Peterson (FL)	Velazquez
Lewis (GA)	Pickett	Vento
Lincoln	Pomeroy	Visclosky
Lipinski	Poshard	Volkmer
Lofgren	Rahall	Ward
Longley	Reed	Waters
Lowey	Reynolds	Watt (NC)
Luther	Richardson	Waxman
Maloney	Rivers	Williams
Manton	Roemer	Wilson
Markey	Ros-Lehtinen	Wise
Martinez	Rose	Woolsey
Martini	Roybal-Allard	Wyden
Mascara	Rush	Wynn
Matsui	Sabo	Yates
McCarthy	Sanders	
McDermott	Sawyer	

NOT VOTING—10

Condit	Johnson (CT)	Rangel
Flake	McDade	Roth
Gibbons	McKinney	
Jefferson	Meek	

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The Clerk announced the following pairs:

On this vote:

Mrs. Johnson of Connecticut for, with Mr. Flake against.

Mr. Roth for, with Mr. Jefferson against.

Mr. CHAPMAN changed his vote from ''aye'' to ''no.''

Mr. BACHUS and Mr. SHAYS changed their vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on H.R. 988, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. DREIER. Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 1058 and ask for its immediate consideration.

The Clerk read the resolution, as follows: